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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,205	08/01/2003	Roy Greeff	MI40-358	3259
21567	7590	03/10/2005	EXAMINER	
WELLS ST. JOHN P.S. 601 W. FIRST AVENUE, SUITE 1300 SPOKANE, WA 99201			ZIMMERMAN, BRIAN A	
			ART UNIT	PAPER NUMBER
			2635	

DATE MAILED: 03/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/633,205

Applicant(s)

GREEFF ET AL.

Examiner

Brian A Zimmerman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 14-20 and 35-78 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14-20,35-78 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **EXAMINER'S RESPONSE**

### **Status of Application**

In response to the applicant's amendment received on 11/16/04. The examiner has considered the new presentation of claims and applicant arguments in view of the disclosure and the present state of the prior art. And it is the examiner's position that claims 14-78 are unpatentable for the reasons set forth in this office action:

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

1. Claims 14-20,35-42,45,46 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16 of U.S. Patent No. 6603391. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patented

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claims include all the limitations of the presently pending claims with additional limitations (note that the additional limitations were added to make the claims allowable). Therefore, the present claims are broader than the patented claims.

The claims correspond to each other in the following manner.

Pending Application	US Patent 6603391
14	1
15	2
16	3
17	4
18	5
19	6
20	7
35	9
36	10
37	11
38	12
39	13
40	14
41	15
42	16
45	16
46	16

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2. Claims 14,35,42,44,45,47,48,53,54,57-60,62,63,65-67,69,70,71,73,74 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 24,45 and 59 of U.S. Patent No. 6192222 in view of Hasegawa and Baldwin.

Hasegawa and Baldwin are applied for their teachings as discussed below, with regard to claims 14,35,42 and 46. The '222 patent (claims 27,45,59) includes limitations that cover adjusting the phase of in a manner that provides the maximum reduction of amplitude of the modulated radio signal. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have used the above discussed system with a phase shifter to maximum reduction of amplitude of the modulated radio signal to provide a reduction of unwanted signal(s).

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 49-52,55,56,61,64,68,72 rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Support could not be found in the specification as

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originally filed to provide sufficient description of the elements in these claims.

The applicant still has not pointed out support for such limitations.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 14-20,35-43,45,46,54,55,75-78 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hasegawa (5355519) and Baldwin (4075632).

The difference between the invention of these claims and the Hasegawa reference is the use of the phase shifter in an interrogation system.

In an analogous art, Baldwin teaches the use of a phase shifter in the interrogator of a backscatter communication system. See figure 2 and the description of the modulation techniques including col. 5 lines 5+. This permits the use of phase modulation in a transponder interrogation system. It is well held in the art that phase modulation has advantages over amplitude modulation in that low cost linear amplifiers can be used since the amplitude of the modulation signal remains relatively constant.

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to have used the phase shifter of Baldwin in the interrogator of Hasegawa to permit the use and known advantages of phase modulation in the interrogation system.

***Response to Arguments***

Applicant's arguments filed 7/8/02 have been fully considered but they are not persuasive.

Regarding the remaining 35 USC 112 new matter rejections, the applicant argues that support was pointed out as being pages 23-36 and figures 7 and 14. The applicant argues that the Examiner must explain why persons skilled in the art would not recognize the invention in the claims. First it is pointed out that generically pointing to 13 pages of the specification to show written description fulfillment is not sufficient as the applicant has not specifically pointed out support for such limitations. MPEP 2163 II. (b) for newly added claims the applicant's responsibility is pointed out. Namely the applicant should specifically point out support for any amendments to comply with the written description requirement of 35 USC 112...when an explicit limitation in a claim "is not present in the written description...it must be shown (by the applicant) that a person would understand that the description requires that limitation." The applicant still fails to specifically point out support for the limitations rejected above. The examiner has identified the claims at issue, see above. Without further guidelines of what is meant by the claim limitations, it is difficult if not impossible for the Examiner to point out how a limitation is missing, when the applicant fails to disclose such a limitation.

Regarding the 35 USC 103 rejection, the applicant argues that there is no motivation to combine the references. In response to applicant's argument that there is no suggestion to combine the references, the examiner

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recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the examiner clearly pointed out that the use of phase modulation signals has a desirable advantage over amplitude modulation in that it can employ the use of low cost linear amplifiers. Furthermore, it is clear from Baldwin that an infinitely variable phase shifter would increase the accuracy in the simulation and subsequent transmission of a radio signal.

On page 8 of the applicant's arguments 11/16/04, the applicant argues that there would be no motivation to combine the references because "Baldwin already discloses the teachings for which Hasegawa is presented." This is an admission that Baldwin would make an appropriate 35 USC rejection.

The applicant argues that one would not be motivated to modify Baldwin's fixed phase shifter by using an infinitely variable phase shifter. First it is point out that the claims do not call for an infinitely variable phase shifter. The claims provide for selecting one of a plurality of phase shift angles, and as the applicant pointed out (continuing paragraph on the top of page 9 of the response filed 11/16/04) Baldwin selects from phase shift angles of +/-90 degrees, thus meeting the selecting one from a plurality. Furthermore, even if the shift angle of Baldwin



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were fixed for all time, the shift angle was chosen at one time and the Baldwin system operates according to the selected phase shift angle thus meeting the claimed limitation.

The applicant argues (page 12 last paragraph 11/16/04) that they have searched Baldwin for the term scaling and since the term scaling does not exist in Baldwin, the applicant dismisses the reference as not teaching the feature. This is completely contrary to the applicant's arguments on page 4 of the same response, where the applicant quotes MPEP 2163.02...the subject matter need not be described using the same terms or haec verba...for the disclosure to be considered teaching the element. The Examiner ponders, which is it. The applicant wants the interpretation of their specification to be all reaching when considering the interpretation of their claims, but then only accepts another patent if it uses the exact terms. This is not permitted. While, it may be true that the exact term(s) (for example: **scaling**) may not be specifically found in the references, one of ordinary skill in the art is well aware that terms are often creatively used in the art when defining the same or similar elements. Upon a full reading of the Baldwin reference, it is clear that a the received signal is split (splitter 60) and the components are scaled according to plurality of phase shift angles (0 degrees and 90 degrees) using amplifiers 50 and 56. Similarly, the applicant argues that Baldwin does not disclose reducing bleed through of the carrier signal. As can be clearly gleaned by looking at figure 2, the in the receiver, the received signal is scaled, selectively phase shifted, combined and filtered with bandpass filter 58. The purpose of this is to acquire the data signal.

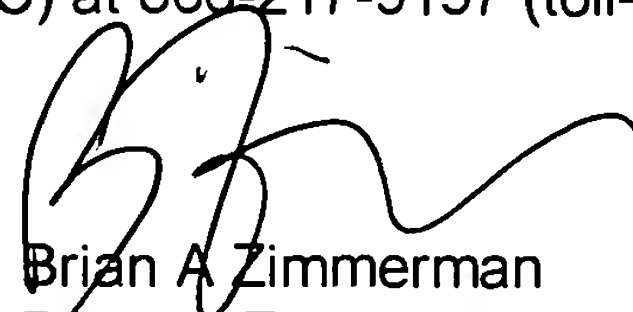
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The intent of the receiver is go pass the data as signal output without the carrier signal, the carrier signal is just that in radio communications, a signal used to carry data. It is always desirable to remove the carrier signal from the data in a receiver. Therefore, the removal or reduction of the carrier signal is the intent of the receiver of Baldwin.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian A Zimmerman whose telephone number is 571-272-3059. The examiner can normally be reached on Off every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Horabik can be reached on 571-272-3068. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Brian A Zimmerman  
Primary Examiner  
Art Unit 2635

BAZ